Filed 3/5/09 Sony BMG Music Entertainment v. Super. Ct. CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

SONY BMG MUSIC ENTERTAINMENT et al., Petitioners, v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; STEPHEN STEWART-SHORT et al., Real Parties in Interest.	B212888 (L.A.S.C. No. BC391026) OPINION AND ORDER GRANTING PEREMPTORY WRIT OF MANDATE

ORIGINAL PROCEEDINGS in mandate. William F. Fahey, Judge. Petition granted.

Katten Muchin Rosenman, Zia F. Modabber, Anissa D. Seymour and Melissa S. Glousman for Petitioners.

No appearance for Respondent.

Johnson & Johnson, Neville L. Johnson, Douglas L. Johnson and Nicholas A. Kurtz for Real Parties in Interest.

The trial court erred in denying defendants Sony BMG Music Entertainment (Sony) and Peter Giberga's (Giberga) motion to stay the court action pending conclusion of the arbitration proceeding. Accordingly, the petition is granted.[1]

FACTUAL AND PROCEDURAL BACKGROUND

Stephen Stewart-Short and Michael Rosenblatt are the former personal managers of the musical group professionally known as Augustana. Augustana terminated Stewart-Short and Rosenblatt's services. After being terminated, Stewart-Short and Rosenblatt initiated two proceedings arising from that termination:

(1) an arbitration against Augustana pursuant to an arbitration clause in their written management agreement. In the arbitration, Stewart-Short and Rosenblatt assert a breach of the management agreement based on Augustana's termination of Stewart-Short and Rosenblatt's services, and seek damages for lost management commissions and credits. Augustana filed counterclaims in the arbitration for breach of fiduciary duty and breach of contract. Those claims and counterclaims are now pending before the American Arbitration Association (Hon. Richard Byrne, Retired) and will be heard on July 1, 2009.

(2) a lawsuit against Sony and Pete Giberga. Sony is Augustana's record company and Giberga is the Sony executive who worked most closely with Augustana. In the superior court case, Stewart-Short and Rosenblatt assert causes of action for intentional and negligent interference with the management agreement on the theory that Sony improperly induced Augustana to terminate Stewart-Short and Rosenblatt's services.

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[1] As there is not a plain, speedy and adequate remedy at law, and in view of the fact that the issuance of an alternative writ would add nothing to the presentation already made, we deem this to be a proper case for the issuance of a peremptory writ of mandate "in the first instance." (Code Civ. Proc., § 1088; *Lewis v. Superior Court* (1999) 19 Cal.4th 1232, 1240-1241; *Alexander v. Superior Court* (1993) 5 Cal.4th 1218, 1222-1223; *Ng v. Superior Court* (1992) 4 Cal.4th 29, 35.) Opposition was requested and the parties were notified of the court's intention to issue a peremptory writ. (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 180.)

Principal among the damages sought in this case are lost management commissions and credits sought by Stewart-Short and Rosenblatt in the arbitration. Trial on the contractual interference claims is scheduled to begin on May 18, 2009, six weeks before the arbitration on the contract claims.

Sony moved the trial court to issue a stay of the court action pending conclusion of the arbitration based on Code of Civil Procedure [2] section 1281.4[3] and the recent holding by Division Seven of the Second District Court of Appeal in *Heritage Provider Network, Inc. v. Superior Court* (2008) 158 Cal.App.4th 1146.

On December, 3, 2008, the trial court denied Sony's motion. The trial court stated, in relevant part: "A decision in this court is likely to assist the parties in any arbitration proceeding, and ultimately, there is no policy reason to defer a properly filed lawsuit where the parties are different in order to allow an arbitration, with, again, different parties to proceed. [¶] So for all of those reasons, the court is not inclined to stay this action but to allow the discovery to go forward, trial to be had, and that may inform both the thinking of the parties and Judge Byrne in any arbitration that he conducts."

DISCUSSION

A stay of the court action is mandated by section 1281.4 and *Heritage Provider Network, Inc. v. Superior Court*, *supra*, 158 Cal.App.4th 1146.

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[2] Unless otherwise indicated, all further statutory references are to the Code of Civil Procedure.

[3] Section 1281.4 provides, in relevant part: "If a court of competent jurisdiction, whether in this State or not, has ordered arbitration of a controversy which is an issue involved in an action or proceeding pending before a court of this State, the court in which such action or proceeding is pending shall, upon motion of a party to such action or proceeding, stay the action or proceeding until an arbitration is had in accordance with the order to arbitrate or until such earlier time as the court specifies."

"When a trial court 'has ordered arbitration of a controversy which is an issue involved in an action or proceeding pending before' the court, it 'shall, upon motion of a party . . . stay the action of proceeding until an arbitration is had in accordance with the order to arbitrate . . . .' (§ 1281.4.) 'It is irrelevant under the statute whether the movant is a party to the arbitration agreement.' [Citation.] Any party to a judicial proceeding 'is entitled to a stay of those proceedings whenever (1) the arbitration of a controversy has been ordered, and (2) that controversy is also an issue involved in the pending judicial action.' [Citation] 'The purpose of the statutory stay is to protect the jurisdiction of the arbitrator by preserving the status quo until arbitration is resolved.' [Citation.] 'In the absence of a stay, the continuation of the proceedings in the trial court disrupts the arbitration proceedings and can render them ineffective.' [Citation.]" (*Heritage Provider Network, Inc. v. Superior Court*, *supra*, 158 Cal.App.4th at p. 1152, fn. omitted.)

In *Heritage*, Eastland Medical Group, Inc. (Eastland) contracted with a number of physicians to provide medical health care to HMO members. (*Heritage Provider Network, Inc. v. Superior Court*, *supra*, 158 Cal.App.4th at p. 1149) Thereafter, Eastland began negotiations to be acquired by Heritage Provider Network, Inc. (Heritage), another health care provider. (*Ibid.*) After the parties failed to reach an agreement, a number of physicians contracted to Eastland terminated those contracts and began to work for the potential purchaser. (*Id.* at pp. 1149-1150.) Eastland commenced an arbitration against the physicians for breach of contract, and filed a complaint against Heritage for, inter alia, intentional interference with contractual relations. Although the Heritage was not a party to the arbitration with the physicians, it brought a motion to stay the judicial case pending arbitration pursuant to the mandatory stay provision of section 1281.4.

The trial court denied the motion for a stay on the grounds that there were "not enough" overlapping issues of law or fact. (*Heritage Provider Network, Inc. v. Superior Court*, *supra*, 158 Cal.App.4th at p. 1151.) The trial court also noted that that "[i]f all it

takes is one same issue then it should be an easy writ to get and I won't take offense if I'm wrong." (*Id.* at p. 1152.)

Division Seven reversed and ordered that the action be stayed pending arbitration on grounds that both the breach of contract and the intentional interference with contractual claims involved the same wrongful conduct, namely the circumstances surrounding the physicians' termination of the health care contracts. (*Heritage Provider Network, Inc. v. Superior Court*, *supra*, 158 Cal.App.4th at p. 1154.) While the overlapping issues in the case were somewhat limited, the appellate court explicitly held that even a single overlapping issue was enough to mandate a stay. (*Id.* at p. 1153.)

In this case, as in *Heritage*, Stewart-Short and Rosenblatt commenced an arbitration for breach of contract against one party, and sued a different party for alleged interference with that same contract. The evidence to be introduced on the alleged interference claim will necessarily overlap with the evidence to be introduced in the arbitration. In both proceedings, the same story will be told, beginning with Augustana's hiring of Stewart-Short and Rosenblatt, the terms and conditions of their management agreement, the signing of the recording agreement with Sony, the performance of Stewart-Short and Rosenblatt under the terms of the management agreement, and Stewart-Short and Rosenblatt's termination. Included in that story will be disputes about whether Augustana terminated Stewart-Short and Rosenblatt because of their failure to perform pursuant to the management agreement, whether they were induced to terminate that management agreement because of some alleged interference by Sony or both. These issues will involve the same documents and many of the same witnesses testifying about the same events as described above. Also, looking at the damages alleged in the superior court case and the arbitration reveals an identical overlap —namely, the lost commissions Stewart-Short and Rosenblatt allege as a result of being fired by Augustana and/or Sony's supposed interference.

A decision to stay the superior court case does not deny Stewart-Short and Rosenblatts' right to seek relief against Sony and Giberga—it merely delays it for a short time to enable the matters before the arbitrator to be heard first.

Even though Sony and Giberga did not move to compel arbitration and the trial court did not order arbitration, we conclude that section 1281.4 applies nevertheless and the ruling of *Heritage* should be followed. It makes no sense to require a party to seek an order for arbitration when the contracting parties voluntarily entered into arbitration as agreed. (Civ. Code, § 3532 ["The law neither does nor requires idle acts"].)

DISPOSITION

THEREFORE, let a peremptory writ issue, commanding respondent superior court to vacate its order of December 3, 2008 denying motion to stay the court action pending conclusion of the arbitration proceeding and to issue a new and different order granting same, in Los Angeles Superior Court case No. BC391026, entitled Stephen Stewart-Short et al. v. Sony BMG Music Entertainment et al.

All parties shall bear their own costs.

NOT TO BE PUBLISHED

THE COURT:

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MALLANO, P. J. ROTHSCHILD, J.